



IN THE NOOKSACK TRIBAL COURT OF APPEALS

ELEANOR J. BELMONT, OLIVE T.
OSHIRO, enrolled members of the Nooksack
Indian Tribe, including MICHELLE JOAN
ROBERTS, et al.,

Plaintiffs and
Counterclaim Defendants,

v.

ROBERT KELLY, Chairman of the Nooksack
Tribal Council, et al.,

Defendants and
Counterclaimants.

NO. 2014 -CI-CL-007

PETITION FOR WRIT OF
MANDAMUS

RELIEF REQUESTED

Pro Se plaintiff Michelle Joan Roberts (“Petitioner”) petitions this Court for a peremptory Writ of Mandamus to require the Nooksack Tribal Council to establish a functional Tribal Court by either restoring Judge Susan Alexander, the chief handling Case No. 2014-CI-CL-007 or by appointing a judge to hear as soon as possible two critical pending motions filed by Petitioner in this docket. This Petition is offered by Petitioner on her own behalf, *pro se*. It is not intended to be and should not be construed as the practice of law or transaction of business within the jurisdiction of the Nooksack Tribe.

ISSUES PRESENTED

Whether the Nooksack Tribal Council may be ordered to either restore Judge Susan Alexander, the judge handling Case No. 2014-CI-CL-007, or to appoint a judge for the Nooksack Tribal Court. As it stands, the Tribal Council has effectively shut down the Nooksack Tribal Court because it has no judge. The Tribal Council fired Judge Alexander and has not appointed any judge to preside over this case or any other matter within the jurisdiction of the Nooksack Tribal Court. Without an order from this Court mandating the relief Petitioner seeks, Petitioner and the other counterclaim defendants will have no means for resolution of three critical motions, which were filed by Plaintiffs or Petitioner on January 29, 2016 and April 11, 2016, respectively. Indeed, without an order from this Court installing a Tribal Court judge, there can be no functioning government at Nooksack. *See generally* Const., art. VI, § 2(a).

STATEMENT OF FACTS

The following facts are supported by the Declaration of Michelle Joan Roberts filed herewith. Petitioner is a member of the group of plaintiffs subject to pending disenrollment proceedings by the Nooksack Tribal Council. The defendants and counterclaimants are members of the Nooksack Tribal Council who have engaged in a pattern of conduct that has ultimately led to the dissolution of the Nooksack Tribal Court, as well as the Nooksack Tribe. Since the beginning of 2016, the Tribal Council has directed efforts to derail every effort made by the plaintiffs to preclude disenrollment and to have the required Nooksack election conducted pursuant to law.

Under Nooksack law, the 2016 election season should have begun with the chairman's appointment of an election superintendent by December 3, 2015. The Nooksack Election Code establishes numerous deadlines thereafter, leading up to the primary election on February 20, 2016, and the regular election on March 19, 2016. All deadlines were missed and no election was conducted as required by the Nooksack Election Code. Four of the Nooksack Tribal Councilmembers' term of office expired no later than March 24, 2016. Because no election was held, no new members were elected to the four positions held by the members whose terms of office had expired.

On January 29, 2016, Plaintiffs (including Petitioner) filed an Emergency Petition for Writ of Mandamus, in the Nooksack Tribal Court. Plaintiffs asked the Tribal Court to compel the election for the four now-expired Council seats. That motion was fully briefed and argued by the parties, through then counsel of record.

On February 12, 2016, Judge Susan Alexander issued an Order holding Plaintiffs' Emergency Petition for Writ of Mandamus in abeyance, pending the Court's consideration of the defendants' motion for an injunction to prevent Plaintiffs from voting in any election for those four seats, because they are proposed for disenrollment. Judge Alexander later denied the defendants' motion, as well as their request for reconsideration of that denial. This Appeals Court then denied the defendants' request for permission to appeal those decisions on an interlocutory basis.

Yet before Judge Alexander could thus rule on Plaintiffs' Emergency Petition for Writ of Mandamus, the defendants terminated her as Tribal Court Chief Judge. Plaintiffs' Emergency Petition of Plaintiffs remains pending before the Tribal Court.

On March 24, 2016, Petitioner filed a Motion for Declaratory Judgment in the Nooksack Tribal Court. The Nooksack Tribal Court waited until April 5, 2016, to notify Petitioner that the Nooksack clerk "rejected this pleading" ostensibly because it failed to contain the correct cause number.

On April 11, 2016, Petitioner refiled the Motion for Declaratory Judgment seeking a declaration that the Nooksack Tribal Council can no longer take any lawful action for failure to have a quorum of duly elected Tribal Councilmembers as of March 24, 2016. In effect, the failure to conduct an election has resulted in the paralyzation of Nooksack tribal government.

In addition to failing to conduct a lawful election, the Tribal Council passed two Resolutions (Nos. 16-27 and 16-28) on February 24, 2016, that had the effect of barring plaintiffs' current counsel, the Galanda Broadman Law Firm, from practicing in the Nooksack Tribal Court. This deprived plaintiffs of legal representation. Petitioner filed a Motion for Judicial Notice to obtain copies of Resolutions 16-27 and 16-28 and Resolution 16-26 that amended Title 60 – the Constitutional Petition Ordinance.

On March 21, 2016, former Chief Judge Susan Alexander granted this motion and ordered Resolutions 16-26, 16-27, and 16-28 to be provided to Petitioner. When these Resolutions were not provided to Petitioner as of April 11, 2016, Petitioner filed a Motion for Order to Show Cause requesting the Nooksack Tribal Court to order the defendants to appear personally and show cause why they should not be in contempt for failure to comply with the Court's March 21, 2016, Order. Both motions were lawfully filed but have not been scheduled for hearing because the Nooksack Tribal Court has no judge.

It appears from various pieces of circumstantial evidence before this Appeals Court that the Tribal Council fired Chief Judge Susan Alexander from her post as

Nooksack Chief Judge after issuing the March 21, 2016, Order. All inquiries to the Nooksack Tribal Court Clerk about a judge have been met either with silence or

misinformation. Petitioner has made repeated attempts to schedule the two pending motions for hearing and has been ignored. The defendants have not replied to them.

The Nooksack told Petitioner that Judge Doucet would be the presiding judge at Nooksack. On April 14, 2016 Petitioner sent an email to Mr. Doucet inquiring as to (1) how to schedule her two pending motions for hearing and resolution, and (2) the status of Plaintiffs' Emergency Petition for Writ of Mandamus to compel the election for the now-expired four Council seats. On April 14, 2016, Mr. Doucet advised her: "I am not the current judge for Nooksack and have no knowledge of the status of any cases at Nooksack."

Petitioner does not know the circumstances of Alexander's removal from her post as Nooksack Chief Judge. She knows only that she is no longer the judge for Plaintiffs/Petitioner's case or at the Nooksack Tribal Court. Petitioner only knows that no judge has been appointed to replace Judge Alexander, and there is no imminent possibility that a judge would be appointed to hear and resolve Petitioner's pending motions. Without issuance of a Writ of Mandamus from this Court, Petitioner has no means of legal recourse in the above case.

ARGUMENT

Appellate courts typically analyze five factors in determining the propriety of mandamus:

- (1) Whether the party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires;
- (2) Whether the petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first);
- (3) Whether the lower court's order is clearly erroneous as a matter of law;
- (4) Whether the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
- (5) Whether the district court's order raises new and important problems, or issues of law of first impression.

Bauman v. United States Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977) (citations omitted).

These factors are only guidelines and raise questions of degree, including how clearly erroneous the Tribal Court/Clerk's Order is as a matter of law and how severe the damage to the Petitioners will be without relief. *Id.* at 655. Furthermore, these factors need not all point the same way or even all be applicable in cases where relief is warranted. *Id.* The existence of clear error as a matter of law, however, is dispositive. *Calderon v. United States Dist. Court*, 98 F.3d 1102, 1105 (9th Cir. 1996).

Here, the *Bauman* factors favor immediate issuance of the Writ.

The Tribal Council has the legal obligation under Article VI § 2(a)(1) of the Nooksack Constitution to establish a Tribal Court. That provision provides, "It shall be the duty of the Tribal Council to provide, through ordinance, for the establishment of a tribal court."

NTC 10.03.010 states, "A chief judge and associate judges shall be appointed by the Tribal Council and shall be compensated on a basis determined by the Council.

When a Tribal Court judge is ill, disqualified or otherwise unavailable, the Tribal Council or its delegate shall appoint a temporary judge."

A tribal court is meaningless without a judge to hear cases and to rule on matters

brought before it. By firing Judge Alexander and refusing to appoint any replacement, the Tribal Council has violated the above laws. Without issuance of a Writ of Mandamus, this situation will continue indefinitely to the substantial harm of Petitioner and the Nooksack Tribe.

This petition is unique in that Petitioner is not appealing from any lower court order because no lower court exists. Thus, factors 3 through 5 from *Bauman* are not germane to this petition, even though the Tribal Council's actions are clearly erroneous as a matter of law.

Petitioner seeks the assistance of this Court pursuant to factors 1 and 2 of *Bauman*.

As to factor 1, Petitioner has no other adequate means to obtain the relief she desires. The Tribal Council has effectively disbanded the Nooksack Tribal Court.

Without a Nooksack Tribal Court, Petitioner's two pending motions cannot be heard and no other action can occur in Petitioner's case.

Petitioner has no adequate means to compel the Tribal Council to fulfill its legal obligations to appoint a judge because it adverse to Petitioner and has demonstrated that it will stop at nothing to cause her and her fellow counterclaim defendants harm in this case. The Tribal Council members are named defendants in this case, and they have done everything they can to stymie Petitioner's attempts for legal recourse in this unlawful disenrollment action. When Judge Alexander issued decisions favoring the Petitioner, the defendant Tribal Councilmembers fired her.

It serves the defendants' interests to refuse judicial relief to Petitioner. Otherwise, the Tribal Council would have to face the consequence of failing to conduct an election, and admit that four Tribal Councilmembers no longer are qualified to sit on the Tribal Council and its purported actions do not and cannot carry the force of law.

Failure to provide a means of judicial relief also protects the defendants from facing contempt charges for failure to turn over the resolutions that resulted in removal of Petitioner's counsel in this case. Again, clearly the Tribal Council's refusal to establish a functioning Tribal Court is yet another tactic to deny Petitioner due process of law in order to gain a litigation advantage in this case.

The second *Bauman* factor is closely related to the first. It is clear that Petitioner will be damaged or prejudiced in a way not correctable on appeal. Petitioner cannot appeal because there is no court from which she could take an appeal. Indeed, Petitioner turns to this Court in desperation to correct an untenable, illegal situation that eviscerates her legal rights, harming Petitioner and the other counterclaim defendants.

This situation is unique. It is a matter of first impression for a Tribal Court to be silenced, if not shut down, by some other branch of government to tactically harm the counterclaim defendants, who are a political minority, all without any due process.

CONCLUSION

Petitioner respectfully requests that this Court issue a peremptory Writ of Mandamus to the Nooksack Tribal Council ordering it to immediately (within 24 hours) reopen the Nooksack Tribal Court with a duly appointed judge or the return of Judge Alexander.

Respectfully submitted this 15 day of April, 2016.



Michelle Joan Roberts, *pro se*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the Nooksack Tribe and the State of Washington that:

1. I am over the age of 18 and have knowledge of the facts stated herein;

2. On the date below I caused the foregoing **Petition for Writ of Mandamus of Plaintiff**

Pro Se Michelle Joan Roberts to be filed with the referenced court; and

3. I caused the same document to be served on the following parties in the manner indicated:

Raymond Dodge, Senior Tribal Attorney Via Email and Regular U.S. Mail
Rickie Armstrong, Tribal Attorney
Nooksack Indian Tribe
Office of Tribal Attorney
PO Box 63
5047 Mt. Baker Hwy
Deming, WA 98244
Email: rdodge@nooksack-nsn.gov

Thomas P. Schlosser
Morisset Schlosser Jozwiak
801 2nd Ave
Seattle, WA [98104-1576](tel:2069811041)
Email: t.schlosser@msaj.com

Via Email

DATED this 15th day of April, 2016, at Bellingham, Washington.


Michelle J. Roberts